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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,047	10/15/2003	David R. Henke	1000.70USC1	7526
23552	7590	02/23/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			SMITH, RICHARD A	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/687,047

Applicant(s)

HENKE, DAVID R.

Examiner

R. Alexander Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 28, 31, 32 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard Catalog, IMPEX Can America, Catalog E-40, 1991-1992 [hereinafter "Richard"] in view of U.S. 5,341,707 to Bond.

Richard discloses a coded identification system for identifying a hand tool including a handle and an operative member, comprising a handle indicating an operating characteristic of the operative member (see series "H" page 6), the operative member connected with the handle, corresponding to the operating characteristic, the operative member being a blade, the handle being coded to identify blade flexibility. Richard also discloses a self-adhering label on the blade and having an icon¹ (in a broad sense a representation or symbol) illustrating a portion of the putty knife in with the same indicia (F or S) as the indicia on the first portion of the handle (e.g., the label showing H 1 F to the left and just below the icon with the name "Richard"), the

¹ "icon" is defined as 1. a. An image; a representation. b. A simile or symbol. This definition is provide by The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation. All rights reserved. American Heritage is a registered trademark of Forbes, Inc.

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indicia disclosing the blade flexibility (F or S), and provides a listing of identification data for more than one blade in the form of a chart which includes width and flexibility.

Richard does not disclose defining flexibility of the blade and the operative characteristic of the operative member by use of a first group of colors, the color indicating blade flexibility, the label on the operative member having said color chosen from said first group of colors indicating said blade flexibility, the icon illustrating a portion of a hand tool in the same color as the color of the first portion, the handle being an integrally molded color handle having the first color, the handle having a first portion with said chosen color from said first group.

Bond discloses a color coded identification system for identifying a hand tool (column 3, lines 56-60; column 4, lines 48-64; column 5, lines 12-24), the hand tool including a handle and an operative member comprising the handle having a first portion and a first color (column 5, lines 21-24) with a color chosen from a first group of colors, and the handle having an integrally molded portion (column 5, lines 36-50) having the color chosen from the first group of colors.

Furthermore, Bond discloses in the columns and lines cited above that the indicia 28 can be painted or coated to correspond to a color coded scheme that will indicate by color the tool type or other selected characteristic of the tool; that the indicia 28 may be raised or recessed, i.e., window, relative to the gripping part of the handle; that an icon, in a broad sense, in the form of indicator having a shape to indicate the type of operative member; and that the invention helps improved marketing (column 5, lines 40-42).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to augment the system, taught by Richard, by adding the color coding features, the recessed window, and an icon, as taught by Bond, in order to clearly distinguish to the user the

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operating characteristic of the operating member and the blade both visually and tactilely, and to improve marketing.

3. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard and Bond, as applied to claims 28, 31, 32 and 44 above, and further in view of U.S. 4,936,170 to Zumeta.

Richard and Mader et al. together teach all that is claimed as discussed in the above rejections of claims 28, 31, 32 and 44 except for a chart defining the operating characteristic of the operative member by use of the first group of colors and the handle including a second color chosen from a second group of colors indicating the handle size.

With respect to claim 29: Zumeta discloses a color coded identification system comprising a chart defining operating characteristics of operating members by use of a first group of colors and provides labeling on the operative member of the same color. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to further enhance the chart, taught by Richard and Bond, by adding the color coding, as taught by Zumeta, and to add the color to the label or to the handle, as suggested by Zumeta, in order to more clearly and quickly distinguish the characteristics of the operating member to the user.

With respect to claim 30: Zumeta discloses that the invention can be used to apply specific colors to implements, including tools, fasteners and similar items, whose effective size varies in clearly defined increments. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have a second portion of the handle, taught by

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Richard, to have a color selected from a second group, as suggested by Zumeta, to indicate handle size in order to make it easier for a user to select the tool having a properly sized handle.

4. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richard and Bond, as applied to claims 28, 31, 32 and 44 above, and further in view of Goodell, Inc. 1993 Catalogue, 693-1, p. 2-4, 7 [hereinafter "Goodell"].

Richard and Bond together teach all that is claimed as discussed in the above rejections of claims 28, 31, 32 and 44 except for the icon shows the operative member of the hand tool, i.e., putty knife, in its intended use.

Goodell teaches that it is desirable to include a chart identification indicia concerning use or function of the tools in the chart (bottom right corner on page 3). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to further modify Richard and Bond, by including on the chart of Richard's indicia identifying tool function, since Goodell teaches that such is beneficial for providing additional information to a user that will facilitate the choice of the specific tool to use.

With respect to the specific arrangement and/or content of indicia (printed matter) set forth in the claim, i.e., the icon shows the operative member in its intended use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to show an icon in its intended use since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the

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prior art in terms of patentability. In re Gulack 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of information does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter, e.g. icon, showing the intended use and the substrate, e.g. the label or the handle, which is required for patentability.

5. Claims 21-23, 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard in view of U.S. 5,341,707 to Bond and U.S. 4,936,170 to Zumeta.

Richard discloses a coded identification system for identifying a putty knife, including a handle and a blade, comprising a handle including a first portion with indicia indicating blade flexibility (see series "H" page 6), the operative member connected with the handle, corresponding to the operating characteristic, the operative member being a blade, the handle being coded to identify blade flexibility. Richard also discloses a self-adhering label on the blade and having an icon² (in a broad sense a representation or symbol) illustrating a portion of the putty knife in with the same indicia (F or S) as the indicia on the first portion of the handle (e.g., the label showing H 1 F to the left and just below the icon with the name "Richard"), the indicia disclosing the blade flexibility (F or S), and provides a listing of identification data for more than one blade in the form of a chart which includes width and flexibility.

² "icon" is defined as 1. a. An image; a representation. b. A simile or symbol. This definition is provide by The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation. All rights reserved. American Heritage is a registered trademark of Forbes, Inc.

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Richard does not disclose a chart defining flexibility of the blade by use of a first group of colors, a color from the first group of colors indicating blade flexibility, the icon illustrating a portion of a putty knife in the same color as the color of the first portion, the chart further includes a second group of colors to define the handle size, the handle further includes a second portion with a color chosen from a second group of colors indicating the handle size, the self-adhering label including a box having a background color same as the first portion, the handle including a first color indicating the blade flexibility.

Bond discloses a color coded identification system for identifying a hand tool (column 3, lines 56-60; column 4, lines 48-64; column 5, lines 12-24), the hand tool including a handle and an operative member comprising the handle having a first portion (28) and a first color with a color chosen from a first group of colors, and a second portion with a different color (column 5, lines 12-24), and a and the handle having an integrally molded ~~color~~ portion (column 5, lines 36-50) having the color chosen from the first group of colors.

Furthermore, Bond discloses in the columns and lines cited above that the indicia 28 can be painted or coated to correspond to a color coded scheme that will indicate by color the tool type or other selected characteristic of the tool; that the indicia 28 may be raised or recessed, i.e., window, relative to the gripping part of the handle; that an icon, in a broad sense, in the form of indicator having a shape to indicate the type of operative member; and that the invention helps improved marketing (column 5, lines 40-42).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to augment the system, taught by Richard, by adding the color coding features, the raised or recessed feature, and an icon, as taught by Bond, in order to clearly distinguish to the

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user the operating characteristic of the operating member and the blade and to improve marketing.

Zumeta discloses a color coded identification system comprising a chart defining operating characteristics of operating members by use of a first group of colors and provides labeling on the operative member of the same color. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to further alter the chart, taught by Richard, by adding the color coded chart, as taught by Zumeta, and to add the color to the label, as suggested by Zumeta, in order to more clearly and quickly distinguish the characteristics of the operating member to the user, in this case flexibility of the blade.

Furthermore, Zumeta discloses that the invention can be used to apply specific colors to implements, including tools, fasteners and similar items, whose effective size varies in clearly defined increments. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have a second portion of the handle, taught by Richard, to have a color selected from a second group, as suggested by Zumeta, to indicate handle size in order to make it easier for a user to select the tool having a properly sized handle.

With respect to the specific arrangement and/or content of indicia (printed matter) set forth in the claim, i.e., the label disposed on the blade having an icon illustrating a portion of a putty knife in the same color as the color of the first portion and the label including a box having a background color same as the first portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to show an icon in its intended use since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally

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related to the substrate it will not distinguish the invention from the prior art in terms of patentability. In re Gulack 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of information does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter, e.g. the label having an icon illustrating a portion of a putty knife in the same color as the color of the first portion and the label including a box having a background color same as the first portion, and the substrate, e.g. the label or the handle, which is required for patentability.

6. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richard, Bond, and Zumeta, as applied to claims 21-23, 25 and 27 above, and further in view of U.S. 6,295,830 to Bruschi.

Richard, Bond and Zumeta together teach all that is claimed as discussed in the above rejections of claims 21-23, 25 and 27 except for the first and second portions are integrally molded members, the second portion covering the first portion indicating the handle size, the second portion being dyed in a color chosen from a second group and the at least one window to show the color of the first portion.

Bruschi discloses the second portion (16) covering the first portion (13) and that the portions can have colors, symbols and markings provided for marketing functions, such as decorative and identification functions including size and operative characteristics of the

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operative member (column 1, lines 21-37) and that the three integrally molded handle components can be color coded. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to alter the color of the second portion and the first portion (10), taught by Richard and Bond, to provide decorative and identification functions on the first portion (viewable through the window) and to insure that the color of the recessed area, i.e., window, is durable and will not wear off.

With regard to the color chosen from the second group being dyed: The use of a particular type of coloring means, i.e., dyed, as claimed by Applicant, is considered to be nothing more than the use of one of numerous and well known alternate types of coloring means that a person having ordinary skill in the art would have been able to provide using routine experimentation in order to color the second portion as already suggested by Bruschi.

7. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richard, Bond, and Zumeta, as applied to claims 21-23, 25 and 27 above, and further in view of Goodell.

Richard, Bond and Zumeta together teach all that is claimed as discussed in the above rejections of claims 21-23, 25 and 27 except for the chart shows corresponding function for each color defined in the chart.

Goodell teaches that it is desirable to include a chart identification indicia concerning use or function of the tools in the chart (bottom right corner on page 3). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to further modify Richard, Bond and Zumeta by including on the chart thereof indicia identifying tool function,


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since Goodell teaches that such is beneficial for providing additional information to a user that will facilitate the choice of the specific tool to use.

With respect to the specific arrangement and/or content of indicia (printed matter) set forth in the claim, i.e., the color and corresponding function: It would have been obvious to one having ordinary skill in the art at the time the invention was made to show the color and corresponding function since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. In re Gulack 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of information does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter, e.g. color and the corresponding function, and the substrate, e.g. the label or the handle, which is required for patentability.

8. Claims 34, 35, 38 and 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard and Bond, as applied to claims 28, 31, 32 and 44 above, and further in view of U.S. 6,295,830 to Bruschi.

Richard and Bond together teach all that is claimed as discussed in the above rejections of claims 28, 31, 32 and 44 except for the handle being an integrally molded color handle having



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the first color, a second portion covering the first portion and having at least one window to show the first portion, the label having an icon illustrating a portion of said hand tool in the same general color as the first portion, the first and second portions are integrally molded members, and the second portion being molded over the first portion, the first portion is an integrally molded color portion having the color chosen from the first group of colors.

Bruschi discloses the second portion (16) being molded over the first portion (13) and that the portions can have colors, symbols and markings provided for marketing functions, such as decorative and identification functions including size and operative characteristics of the operative member (column 1, lines 21-37) and that the three integrally molded handle components can be color coded. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to alter the system, taught by Richard and Bond, to integrally mold the first color, to add the second covering the first portion having said at least one window to show the first portion, to integrally mold the first and second portions and to mold the second portion over the first portion, to mold the first portion as the color, as taught by Bruschi, and to add the color code to the first portion, as suggested by Bruschi, in order to obtain a tighter connection between the portions, to remove the manufacturing step of painting and to insure that the color of the recessed area is durable and will not wear off.

With respect to the specific arrangement and/or content of indicia (printed matter) set forth in the claim, i.e., the label having an icon illustrating a portion of a putty knife in the same color as the color of the first portion: It would have been obvious to one having ordinary skill in the art at the time the invention was made to show the color on the label since it would only depend on the intended use of the assembly and the desired information to be displayed. Further,

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it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. In re Gulack 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of information does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter, e.g. the icon illustrating a portion of the putty knife in the same color, and the substrate or first portion, which is required for patentability.

9. Claims 36, 37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard, Bond, and Bruschi, as applied to claims 34, 35, 38 and 40-43 above, and further in view of Zumeta.

Richard, Bond and Bruschi together teach all that is claimed as discussed in the above rejections of claims 35, 38 and 40-43 except for the second portion of the handle has a color chosen from a second group of colors indicating handle size, a chart defining the handle size by use of a second group of colors, and a chart defining the operating characteristics of the operative member by use of the first group of colors.

Zumeta discloses a color coded identification system comprising a chart defining operating characteristics of operating members by use of a first group of colors and provides labeling on the operative member of the same color. Therefore it would have been obvious to

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one of ordinary skill in the art at the time of the invention to further alter the chart, taught by Richard, Bond and Bruschi, by adding the color coded chart, as taught by Zumeta, in order to more clearly and quickly distinguish the characteristics of the operating member to the user.

With respect to a chart defining the handle size by use of a second group of colors: It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the chart define the handle size by use of a second group of colors, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. v Bemis Co., 193 USPQ 8. In this case to identify additional characteristics of a hand tool more clearly and quickly.

With respect to the second portion of the handle having a color chosen to indicate handle size: Zumeta discloses that the invention can be used to apply specific colors to implements, including tools, fasteners and similar items, whose effective size varies in clearly defined increments. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have a second portion of the handle, taught by Richard, Bond and Bruschi, to have a color selected from a second group, as suggested by Zumeta, to indicate handle size in order to make it easier for a user to select the tool having a properly sized handle.

Response to Arguments

10. Applicant's arguments filed November 15, 2004 have been fully considered but they are not persuasive.

With respect to the arguments addressing claims 21-27 and 44:

With respect to color coding, flexibility and Mader in combination, this argument is moot in view of the new ground(s) of rejection.

In response to applicant's argument that there is no suggestion to combine the references, i.e., Zumeta, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In this case, the skill or knowledge would be obvious to one of ordinary skill in the art. Richard discloses that the label on the blade and the handle each carry indicia, in a broad sense

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an icon, that indicates blade flexibility and includes a chart in the brochure that addresses width and flexibility. Zumeta discloses that a chart and the corresponding tool can incorporate color to help the user to more clearly and quickly distinguish the characteristics of the operating member to the user. Therefore, it appears to the examiner that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Richard's indicia on the label the handle and the chart to include color as suggested by Zumeta, in order to help the user to more clearly and quickly distinguish the characteristics of the operating member to the user.

With respect to the icon illustrating a portion of the putty knife and the coloring, this argument is moot in view of the new ground(s) of rejection.

Zumeta discloses a color coded identification system comprising a chart defining operating characteristics of operating members by use of a first group of colors and provides labeling on the operative member of the same color. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to further alter the chart, taught by Richard, by adding the color coded chart, as taught by Zumeta, and to add the color to the label, as suggested by Zumeta, in order to more clearly and quickly distinguish the characteristics of the operating member to the user, in this case flexibility of the blade.

Furthermore, Zumeta discloses that the invention can be used to apply specific colors to implements, including tools, fasteners and similar items, whose effective size varies in clearly defined increments. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have a second portion of the handle, taught by Richard, to have a

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color selected from a second group, as suggested by Zumeta, to indicate handle size in order to make it easier for a user to select the tool having a properly sized handle.

With respect to the arguments addressing claims 28-34:

With respect to color coding, flexibility and Mader in combination, this argument is moot in view of the new ground(s) of rejection.

With respect to the arguments addressing claims 35-43:

With respect to color coding, flexibility and Mader in combination, this argument is moot in view of the new ground(s) of rejection.

With respect to Bruschi and the window: This argument is not persuasive since it was Mader that was relied upon for teaching the addition of a window and first and second portions wherein the second portion was applied over the first portion, and is somewhat applicable to the newly applied reference Bond in that Bond discloses a recessed window that can be painted a different color indicative of a characteristic of the operative member.

Bruschi was relied upon for teaching that a handle having multiple integrally molded portions can have colors, symbols and markings provided for marketing functions, such as decorative and identification functions, including size and operative characteristics of the

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operative member (column 1, lines 21-37) and that the three integrally molded handle components can be color coded. Therefore it appears to the examiner that it would have been obvious to one of ordinary skill in the art at the time of the invention to alter the system, taught by Richard as modified by Bond, to integrally mold the first color, to add the second covering the first portion having said at least one window to show the first portion, to integrally mold the first and second portions and to mold the second portion over the first portion, to mold the first portion as the color, as taught by Bruschi, and to add the color code to the first portion, as suggested by Bruschi, in order to remove the manufacturing step of painting and to insure that the color of the recessed area is durable and will not wear off.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The prior art cited in PTO-892 and not mentioned above disclose related systems.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Alexander Smith whose telephone number is 571-272-2251. The examiner can normally be reached on Monday through Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'R. Alexander Smith', with a long horizontal flourish extending to the right.

R. Alexander Smith
Patent Examiner
Technology Center 2800

RAS
February 18, 2005